INDEX

	PAGE
Opinions Below	3
Jurisdiction	3
Questions Presented	4
Statutes Involved	4
Statement	4
Point I.—There is no jurisdiction in this Court to review the Delaware judgment on writ of certiorari because no substantial federal question was "specially set up or claimed" in the state court	9
Point II.—There has been no "collateral attack" on a Czech judgment and, even if there were, no federal question for review by this Court would be presented	11
Point III.—Failure to treat the Dutch judgment as *res judicata* on the issue of sales legacy does not present a federal question	13
Point IV.—The Delaware Court has not denied any rights of petitioner under treaties with Brazil	14
Point V.—The conduct of external affairs by the national government does not make a federal question out of the state court determination of foreign law	15
Conclusion	16

Authorities Cited

Decisions

Aetna Life Insurance Co. v. Tremblay, 223 U. S. 185 (1912)	10, 13
Bata v. Bata, 306 N. Y. 96	1, 11
Bata v. Bata, 99 N. Y. S. 2d 535 (1950)	6, 11
Hapai v. Brown, 239 U. S. 502 (1916)	12
U. S. v. Pink, 315 U. S. 203 (1912)	15
Williams v. Armroyd, 11 U. S. (7 Cranch) 423 (1813)	12

Statutes

Judicial Code, 28 U. S. C. § 1257(3)	3, 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

JAN A. BATA, *Petitioner*, v. THOMAS J. BATA; THOMAS J. BATA and DAVID GRAHAM as Executors of the Estate of Mary T. Bata; and WESTERN INVESTMENT AND TRADING COMPANY LIMITED, a Bermuda Corporation, *Respondents.*	No.

On Petition for a Writ of Certiorari to the Supreme Court of Delaware

BRIEF FOR RESPONDENTS IN OPPOSITION

After over six years of litigation, the state courts in Delaware have adjudged title to the property in suit, physically located in Delaware, to be in respondents. This followed other long litigation between the same parties in New York, where the state courts likewise adjudged property there in dispute, physically located in New York, to belong to respondents (306 N. Y. 96). There was also litigation between the parties in Holland and in Switzerland. The property located in Holland was awarded to petitioner; the property located in Switzerland was awarded to respondents.

The basic reason why the petition should not be granted is that no "federal question of substance" (Rule 19) was decided by the state court below; indeed no federal question, whether "of substance" or not, was really raised by petitioner until petition for reargument below.

The property in Delaware and in the other jurisdictions belonged to (or derives from) Thomas Bata (sometimes referred to herein as "Thomas"), a citizen of Czechoslovakia who died there in 1932. Thomas Bata's nearest surviving relatives, his intestate heirs under Czech law, were his widow and only child, a son; they are the respondents here (the widow died and her estate is one of the respondents along with a Bermuda assignee of certain of her assets; the respondents are sometimes referred to as "the heirs"). Thomas Bata left more distant relatives surviving, including a number of half-brothers; one of these is the petitioner (sometimes referred to herein as "Jan").

The issue in all the litigation has been the devolution under Czech law of the property left by Thomas Bata. The courts of New York, Switzerland and Delaware decided in favor of respondents on the ground that Thomas Bata did not dispose of the property by his will and that ownership under Czech law was thus vested in respondents as his intestate heirs. The court in Holland decided in favor of petitioner on the theory that documents left by Thomas Bata contained a *legatum renditionis causa*, or "sales legacy", in favor of petitioner.

The complex of litigation began in March 1947. The first mention of any federal question was in a short section of a brief filed for petitioner in the Supreme Court of Delaware, dated January 24, 1959; this merely argued (page 126) that failure to accept the Dutch decision as *res judicata* "conflicts with the United States Constitution". It was admitted that "no treaty governs the question" but it was argued that failure to accept foreign judgments was a violation of "international comity" (page 129).

The next reference to a federal question was in the petition for reargument filed in the Supreme Court of Delaware on January 16, 1961. Along with six non-federal grounds, the petition for reargument presented a claim based on the Brazil treaties. The Delaware Court denied the petition for reargument and thus did not really decide

any federal question. In its denial of the petition for reargument, however, the Delaware Supreme Court remarked in an opinion that it required "some ingenuity" to find in the Brazil treaty "any pertinency to this litigation" and that dragging in the Brazil treaty was merely an attempt to "reintroduce" old arguments "in the guise of a federal question" (Appendix A, pages 172, 173; parenthetical references herein to "Appendix" are to appendices to the petition). In denying an application for a stay, the Supreme Court of Delaware declared that no substantial federal question had been presented (Appendix A, page 178).

There is no jurisdiction in this Court to review the judgment below because no "title, right, privilege or immunity" was "specially set up or claimed" in the state court "under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States" (28 U. S. C. § 1257 (3)).

If this Court does have jurisdiction, the petition even so presents no issue appropriate for decision here; it should be denied. The Brazil treaty at best merely gave petitioner a right of access to our local courts, and this right has been fully accorded him. There is no federal question and, if there be one, it is without substance.

Opinions Below.

The opinion of the Delaware Chancery Court is reported at 139 A. 2d 159. The opinion of the Supreme Court of Delaware is reported at 163 A. 2d 493. The opinion of the Supreme Court of Delaware denying the petition for reargument is unreported but is printed in Appendix A, pages 161-176.

Jurisdiction.

We submit that there is no jurisdiction in this Court to review the state court judgment below. The jurisdiction *sought* to be invoked is the last part of Section 1257(3) of the Judicial Code (28 U. S. C. § 1257(3)).

Questions Presented.

1. Was any title or right under a Brazil treaty or under the United States Constitution properly claimed by petitioner in the state court?

3. Did the state court deny any title or right of petitioner under a Brazil treaty or the United States Constitution

a. by its finding that as a matter of Czech law there was no "sales legacy" to petitioner, and that the property in suit belonged to respondents?

b. by its finding that as a matter of Dutch law the determination by the Dutch Court of the issue of sales legacy in favor of petitioner would not be binding in subsequent actions in Holland and thus as a matter of Delaware law should not be given collateral estoppel effect in Delaware?

c. by its reference, in denying a petition for reargument, to a New York determination as "binding . . . under the doctrine of collateral estoppel"?

Statutes Involved.

Section 1257(3) of the Judicial Code (28 U. S. C. § 1257(3)) reads in relevant part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . . . .
>
> (3) By writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

Statement.

Thomas Bata at the time of his death in 1932 owned a worldwide shoe business, represented by shares of stock in

many corporations both in and out of Czechoslovakia. His net worth was between 30 and 45 million dollars.

On the day of his death, the office safe of Thomas Bata was opened and two papers in his handwriting were found: one was a sale memorandum dated May 10, 1931 and the other was a last will dated May 19, 1931. Agreed translations of these two papers are printed in the Delaware Supreme Court opinion (Appendix A, pages 137-140). They had never been delivered or out of the possession of Thomas and had never been seen by petitioner prior to the death of Thomas.

The sale memorandum made it appear that on May 10, 1931 Thomas Bata sold all his property to petitioner for one million dollars, to be paid "within one year from taking over the companies". The will represented that the property of Thomas consisted of the claim against Jan for the million dollars, and then made legacies of this sum.

It seems clear that the object of the papers was to pretend that the estate of Thomas was very much smaller than it really was, and thus to avoid estate taxes. The courts of Delaware and of New York have so found (e.g., Appendix A, page 145).

There is no executor or administrator in Czechoslovakia; this function is performed by the heirs. The property of decedent, after a period of suspense, is delivered by the Estate Court to the heirs, who become vested with title and ownership of the property but are under the duty to satisfy all obligations of decedent and to pay all legacies.

Heirs may be named in the will, that is, appointed to receive the whole or a fractional part of the estate whatever it may be; this is as opposed to legacies of specific property to legatees. There were no heirs named in the will of Thomas Bata because it contained only legacies and no "residuary clause"; respondents were his intestate heirs.

The estate of Thomas Bata was dealt with as if the statement in the will were true, that he had sold his prop-

erty before death to Jan and that his only asset at death was the claim for the supposed purchase price.

There were no adversary proceedings in Czechoslovakia and Jan was not a party to any estate proceedings.

The Czech Estate Court on June 28, 1933 made a "deed of delivery" of the "estate of Thomas Bata" to respondents as intestate heirs (Appendix B, pages 34, 35). Under Czech law, the effect of this delivery was to vest ownership in respondents to *all* the estate of Thomas Bata, whatever it was. The deed of delivery purports, however, to list the estate property being delivered; this is said in the deed to be the fictitious purchase price and some minor personal effects. Nevertheless, the listing of estate property in the deed is surplusage and without significance; it cannot, as a matter of Czech law, limit the effect of the deed, which is to pass ownership to respondents of *the entire estate* of Thomas Bata.

As the Delaware Supreme Court found: "This deed under Czech law has the effect of vesting in the heirs title to *all* the estate, whether or not mentioned in the deed" (Appendix A, page 111; italics in original).

This same finding had been made in earlier litigation in New York (99 N. Y. S. 2d at 576; italics in original):

> "Under the law of Czechoslovakia the Deed of Delivery has the effect of conveying to plaintiffs any property owned by Thomas at the time of his death, as part of 'the whole remaining estate', *whether or not specifically mentioned in the deed.*"

Petitioner asserts as ground for review here that there has been a "collateral attack" on the Czech deed of delivery in that the state court has not limited the effect of the deed to the property listed in it (e.g., Petition, pages 13-17). But this is no collateral attack. On the contrary, the state court has determined what effect the deed would be given in *Czechoslovakia itself* and has given it precisely that effect in the case at bar. Respondents rely on the deed

as the source of their title; they would never invite, or benefit from, any attack on the deed; it was the deed which vested ownership in them of all the property left by Thomas Bata.

After the death of Thomas Bata, the physical possession of the share certificates remained with assistants who had held them during the life of Thomas. The property in suit has never been in the possession of petitioner (nor of respondents). As found below: "Jan never had possession of the Leader shares in suit" (Appendix A, page 155).

Jan did become manager of the business, the widow being without experience at the death of Thomas and the son being then only 17 years old.

The litigation commenced after World War II, as a result of wartime divisions and quarrels.

Certificates for 826 bearer shares of Leader A.G., a Swiss holding company, were in a safe deposit box in New York. The heirs brought an action to obtain them as owners. Jan appeared in the action and claimed ownership.

The heirs then and in all litigation have claimed that the property belonged to Thomas Bata at his death and passed to them as intestate heirs under the deed of delivery. Jan claimed in New York that there was an *oral* contract between him and Thomas made in conversations in May 1931 to which he testified. The New York courts rejected the testimony as false, found that there was no oral contract, and determined that the intestate heirs were owners under the Czech deed of delivery (Appendix C, pages 7, 14).

In the court of first instance in New York, Jan argued the effect in Czech law of the deed of delivery, contending that it was limited to the property listed in it. This contention was thereafter abandoned and was not raised again until the petition for reargument in the Delaware Supreme Court, and now in the petition to this Court.

After rejection of his claim of an oral inter vivos contract, Jan advanced the claim of "sales legacy". Under this theory, the property belonged to Thomas Bata at his

death but the two papers contained a legacy to Jan of the right to buy all the property of Thomas for one million dollars. The new theory accepted the Czech law that the heirs took title to all the property under the deed of delivery, but went on to claim that they as heirs were under an obligation to satisfy a sales legacy to Jan.

The sales legacy theory was presented in actions in Holland and Switzerland; it was accepted in Holland and rejected in Switzerland.

Upon conclusion of the New York litigation, the case at bar was commenced.

The issues in the Delaware litigation were principally these:

1. Was the Dutch judgment *res judicata* that there was a sales legacy to Jan?

2. Was the New York judgment *res judicata* that there was not a sales legacy to Jan?

3. As a matter of Czech law, did the two papers left by Thomas Bata contain a sales legacy to Jan?

The Delaware Supreme Court found:

1. That the Dutch judgment as a matter of Delaware law was not *res judicata* on the issue of sales legacy because as a matter of Dutch law it would be given no such effect in Holland (Appendix A, pages 128-136).

2. That the New York judgment was not *res judicata* on the issue of sales legacy because such issue was not decided in New York (Appendix A, pages 116-119).

3. That under Czech law there was no sales legacy to Jan in the two papers because the sale memorandum "is drafted to avoid any suggestion in any of its words that the disposition to Jan was for the event of death" and "the will contains no sug-

gestion of a legacy to Jan or any provision for his benefit" (Appendix A, page 144).

During all this long litigation in New York and in Delaware, no federal right had been claimed for petitioner. The only reference in the voluminous briefs to any possible federal question was an argument, virtually in passing, that the Dutch judgment must be given *res judicata* effect because it is in the sphere of "international policy" and under the Constitution committed to the federal government (Brief on the Law for petitioner to Supreme Court of Delaware, page 129).

It was only on the petition for reargument below that a federal "right" or "title" was expressly claimed for Jan, this being grounded on two treaties with Brazil (Appendix E, pages 21-24).

POINT I.

There is no jurisdiction in this Court to review the Delaware judgment because no substantial federal question was "specially set up or claimed" in the state court.

The federal questions argued in the petition were not properly raised in the state courts.

In the trial court, no federal question was even suggested.

In the Supreme Court of Delaware, there were over 600 pages of briefs for petitioner, on only 4 of which was a federal question mentioned.

It was argued there that the lower state court decision was in conflict "with the United States Constitution" although no specific provision of the Constitution was referred to and although no such claim had been made in the lower state court. The appeal was generally to "the comity of the nation" and to "the national government's suprem-

acy in international policy" (pages 128, 129 of Brief on the Law for petitioner in the Supreme Court of Delaware).

After decision of the Delaware Supreme Court on the merits, by petition for reargument a claim was presented, among others, under the Brazil treaties (Appendix E, pages 21-24).

The Delaware Supreme Court denied the petition for reargument and also denied a stay pending decision on this petition; in so doing the court declared that "appellant has not presented any substantial federal question" (Appendix A, page 178).

We submit that a jurisdictional element is lacking in that no federal question of substance was properly raised in the state court, that no "right" or "title" was "specially set up or claimed". Even the glancing reference to "comity" and "international policy" did not appear to involve any claim to any "right" or "title".

Where it was sought to bring before this Court a state court decision denying any effect to a Canadian judgment, a writ of error was dismissed for lack of jurisdiction. In part, this was because no "right, etc. protected by the Constitution of the United States" had been "asserted in the state court" (223 U. S. at 190). In part, it was because the Constitution confers no right as to foreign judgments. This Court said:

> "The first section of Art. IV of the Constitution confers the right to have full faith and credit 'given in each State to the public acts, records, and judicial proceedings in every other State.' No such right, privilege or immunity, however, is conferred by the Constitution or by any statute of the United States in respect to the judgments of foreign states or nations, and we are referred to no treaty relative to such a right."
>
> *Aetna Life Insurance Co.* v. *Tremblay*, 223 U. S. 185, 190 (1912).

POINT II.

There has been no "collateral attack" on a Czech judgment and, even if there were, no federal question for review by this Court would be presented.

The argument for petitioner is that the Estate Court deed in Czechoslovakia did not deliver to the heirs all the property belonging to Thomas, including the property in suit, but that only the property mentioned in the deed itself was transferred to the heirs (Petition, pages 15-16).

This is simply an argument of Czech law concerning the effect of the deed and is an attempt to have this Court review a finding of fact (foreign law) made by the state court.

It was found as a fact from the evidence in the New York trial court that the deed of delivery under Czech law embraced *all* property of a decedent, whether enumerated in the deed or not (99 N. Y. S. 2d 535). The New York Court of Appeals referred to this finding as follows (306 N. Y. 96, 107; Appendix C, page 14; italics in original):

> "When the court delivers the estate to the heirs, they take title to *all* property of the decedent, whether known or *unknown*, subject to legacies and debts, as there is no administrator or executor in their civil law."

In denying the petition for reargument, the Delaware Supreme Court referred to this point, concluded it was bound by the New York determination, but expressed agreement with that determination (Appendix A, pages 169-171).

The point decided below in this connection is that under Czech law the effect of the deed of delivery was to vest ownership in the heirs to all of the property of Thomas Bata. This is no "attack" on the Czech decree, collateral or otherwise; it gives full effect to that decree exactly as would be given in Czechoslovakia.

It should be noted moreover that even if petitioner's present argument on the effect of the deed were accepted,

it gives no basis for the claim that the state court "decided to take away the property of the petitioner . . . and turn it over to respondents" (Petition, page 15). Neither the deed nor any other Czech judicial document purports to transfer anything to petitioner; he was not even a party to any of the estate proceedings, which assumed (erroneously) that property *had been* transferred to Jan by Thomas in his lifetime and did not assume or decide that anything was *to be transferred* to Jan in the estate proceedings. The only transfer by the Estate Court was *to the heirs* and this was of the *whole* estate, whether more or less than or different from what had been supposed to comprise the estate.

But assuming that the Delaware Court did permit a collateral attack on the Czech decree and assuming that this was an error, no federal question for review here would be presented.

The property in suit was physically present in Delaware. Certainly there was jurisdiction in the Delaware Courts to determine title to such property. The argument for petitioner that the Delaware Court "is without jurisdiction to make such a collateral attack" (Petition, page 13) cannot be taken seriously.

None of the cases in this Court cited for petitioner (Petition, pages 13-14) have any tendency to show the presence of a federal question.

Williams v. Armroyd, 11 U. S. (7 Cranch) 423 (1813), three times cited in the petition (pages 3, 8, 13), did not come up from a state court but from a federal admiralty court; it involved the effect of a French court decree but did not involve any federal question whatever.

Hapai v. *Brown*, 239 U. S. 502 (1916), twice cited in the petition (pages 8, 13), came up under the old practice from the then Territory of Hawaii. There was no federal question but only an issue of *res judicata* on the merits.

The other cases are equally without any bearing on the question whether the state court decision below should be

here reviewed. Not one is an instance where "a state court has decided a federal question of substance not theretofore determined by this Court, or has decided it in a way probably not in accord with applicable decisions of this Court" (Rule 19).

We submit that there is no possible federal question in the treatment of an issue of Czech law by the state court below. That the Delaware Court may have accepted a New York decision as *res judicata* clearly does not violate any federal right of petitioner; it is only a *denial* of full faith and credit which might raise a Constitutional question.

POINT III.

Failure to treat the Dutch judgment as *res judicata* on the issue of sales legacy does not present a federal question.

Petitioner asserts that the treatment of the Dutch judgment in Delaware "is contrary to the decisions of this Court" (Petition, page 18). No such contrary decision is cited and none was cited in the courts below. We know of none.

In any event, the "full faith and credit" clause of the Constitution is not applicable to judgments of a foreign country.

Aetna Life Insurance Co. v. *Tremblay, supra.*

And the Delaware Court did not disregard the Dutch determination of sales legacy because it was made by a foreign court.

The Delaware Court found that under Dutch law the Dutch decision would not be *res judicata* in Holland itself (Appendix A, pages 130-136, see also page 128).

It thus felt able to decide the issue on the merits and, so doing, reached a conclusion contrary to that of the Dutch Court, whose reasoning it found "naive" and not "persuasive" (Appendix A, page 143). It should be noted that

the Delaware conclusion is in accord with that of the Swiss Court.

We submit that no treaty right of petitioner, nor any Constitutional or other federal right, has been violated because of findings made below on issues of Dutch law.

POINT IV.

The Delaware Court has not denied any rights of petitioner under treaties with Brazil.

In the 1829 treaty with Brazil, the United States promised to leave open to citizens of Brazil "the tribunals of justice . . . on the same terms which are usual and customary, with the natives and citizens" of this country (Petition, page 5). In the 1930 treaty, it is simply stated generally that states should extend to foreigners "all individual guaranties extended to their own nationals" (Petition, page 5).

These treaties mean no more than that our courts should be open to foreigners without discrimination.

No complaint is or can be made of any discrimination below because petitioner is a foreigner. Indeed, respondents are also foreigners.

What petitioner complains of is simply that the decision below is wrong on the merits (Petition, page 18).

The argument is repeated that "his property" should not be "taken from him" by a state court "acting without jurisdiction" (Petition, page 18). This amounts to saying that the decision below is in error, not that it violates treaty rights.

It is unthinkable to suppose that every case in the state courts involving a foreign citizen or subject can be brought to this Court for review of alleged error on the merits. Yet this country has treaties with nearly all nations under which access to our courts is promised just as in the treaty with Brazil.

Petitioner's argument is not correct and his construction of the treaty is an impossible one.

POINT V.

The conduct of external affairs by the national government does not make a federal question out of the state court determination of foreign law.

The petition argues that the state court has failed to respect the Czech deed of delivery and the Dutch judgment, and that this gives rise to a federal question because the national government conducts foreign affairs (Petition, pages 7-8, 18, 20).

The attempt is apparently to extend to any state court determination of foreign law the result in *U. S. v. Pink*, 315 U. S. 203 (1942).

We have pointed out that there has been no disregard by the state court of either the Czech deed or the Dutch judgment. On the contrary, the Delaware Supreme Court gave what it believed to be the exact effect which would be given to the Czech deed in Czechoslovakia and to the Dutch judgment in Holland.

But even assuming there has been disregard by a state court of the judgment of a foreign country, we are not aware of any decision by this Court (or any suggestion elsewhere) that a federal question would thereby arise.

The *Pink* case involved a most dramatic chapter in the foreign affairs of this country, the recognition (after many years) of Soviet Russia and in connection therewith the Litvinov assignment from Russia to the United States. The United States itself asserted a right under this assignment, which was a diplomatic transaction having in substance the effect of a treaty. It was the presence of these elements which gave rise to the federal question. As the majority opinion stated: "The claim of the United States based on the Litvinov assignment raises a federal question" (203 U. S. at 217).

We submit that determinations of foreign law by state courts, made in the course of ordinary trial of title between

private persons to property in the state, do not involve a federal question merely because the national government carries on foreign affairs.

Conclusion.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

INZER B. WYATT,
SULLIVAN & CROMWELL,
48 Wall Street,
New York 5, New York.

ROBERT H. RICHARDS, JR.,
RICHARDS, LAYTON & FINGER,
4072 DuPont Building,
Wilmington 1, Delaware.

Counsel for Respondents.

June 2, 1961